

CCRB CASE CLOSING FORM

Investigator assigned: Simone Cherry		Team: #5	CCRB#: 9702208	FADO: Force-mace, push, kick, & (other): neck grabbed Discourtesy: curse
Date of incident: 6-16-1997	Time of incident: Approx. 4:23 p.m., according to Arrest reports, see encl.# 7-9.	Location of incident: § 87(2)(b) in Bklyn. and RMP.	Pct. Of occurrence: 67 Precinct	Date S.O.L. expire: 12-16-1998
Date reported: 6-25-1997	Time reported: 1:56 p.m.	To whom/where/how reported: The complainant/victim phoned her complaint to CCRB.		
Complainant/victim: § 87(2)(b)		Home address: § 87(2)(b)		
Victim: § 87(2)(b) (uncooperative)		Same as the complainant's		
Witnesses: § 87(2)(b) § 87(2)(b) (uncooperative)		Same as the complainant's Same as the complainant's		
Subject Officer(s) (rank): P.O. Robert W. OHare		Shield: 27160	Tax: 916960	Command: 67 th pct.
Witness Officer(s) (rank): P.O. Peter Bagnasco		31472	903387	67 th pct.
Allegation(s) by letter: A. PO Robert OHare used excessive force when he maced § 87(2)(b) in violation of Patrol Guide procedure 116-48. B. PO Robert OHare used excessive force when he pushed, kicked, and grabbed § 87(2)(b) by the neck in violation of Patrol Guide procedure 104-01. C. PO Robert OHare told § 87(2)(b) "sit the fuck down, you're two minutes from going the fuck to jail" in violation of in violation of Patrol Guide procedure 104-01, pg.3 (under prohibited conduct). D. An unidentified officer repeatedly used the word fuck while speaking to § 87(2)(b) in violation of in violation of Patrol Guide procedure 104-01, pg.3 (under prohibited conduct).				Recommendation(s): § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g)

Summary

This incident is a family dispute between sisters and brother that occurred on June 16, 1997 at about 4:23 a.m. inside the residence of the complainant/victim § 87(2)(b). This dispute resulted from § 87(2)(b) calling 911, twice, requesting that her brother § 87(2)(b) leave the apartment. Enclosed in the case folder from the Communication Division are two tape cassettes stating this. All three parties (§ 87(2)(b), § 87(2)(b) and § 87(2)(b)) were arrested and charged separately with different charges. (See 'Arrest Reports' enclosures #7-9 and #10-12).

§ 87(2)(g) § 87(2)(b) and her brother § 87(2)(b) were not interviewed. They both are uncooperative and have missed several scheduled appointments with investigator, (see 'Investigator Action Sheets' enclosures #15 & 16). The investigator sent both parties separate uncooperative letters, informing them that their case will be closed without their statements, (see enclosures #25A, 27A, 28B, and 28C).

However, the complainant/victim § 87(2)(b) and her boyfriend § 87(2)(b) were interviewed. Ms.

§ 87(2)(b) provided statements, (see enclosures #2D-E), about the incident involving her brother, § 87(2)(b) and Officer Robert OHare. She said that she and her brother began arguing. Officer OHare grabbed her brother by the neck and pushed him out the bedroom, against the livingroom wall and told him, "to sit down," before saying, "...sit the fuck down you're two minutes from going the fuck to jail." Her brother replied, "I'm going to sit down wait a minute." Officer OHare then kicked him in the genitals and threw him on a bed and told him, "...I'm going to fucking arrest you, that's what you want your going to get it." § 87(2)(b) said she told her brother "to listen," but he would not. Officer OHare then maced § 87(2)(b) in the face and handcuffed him. § 87(2)(b) was standing in close proximity to them when this happened and the mace got in her eyes and throat. § 87(2)(b) also claimed that the mace irritated her stomach. She put alcohol on her stomach and sustained a raised bruise and did not go to the hospital.

After her brother § 87(2)(b) was handcuffed and placed under arrest, § 87(2)(b) left her apartment and followed the officers outside. She was also arrested and charged with § 87(2)(b).

While in the patrol car with other unidentified officers, she said that one of them cursed at her. This happened after she told the officer she just had a baby and wanted him to stop the patrol car from bumping up and down. The officer replied, "shut the fuck up, if you did the crime you are going to pay the motherfucking time." He also said, "I don't give a fuck about you just now having a baby, I don't care, I care about arresting you that's all I care about. Stop fucking crying because if you don't stop crying I'm going to put you in a dirty rotten cell with all those fucking crack heads."

The witness § 87(2)(b), is the boyfriend to the complainant/victim § 87(2)(b). § 87(2)(b) corroborated § 87(2)(b) statements that she and her sister § 87(2)(b) and brother § 87(2)(b) were engaged in an argument. The sister § 87(2)(b) called officers to the apartment. § 87(2)(b) cursed at the officers and began arguing with his older sister, § 87(2)(b) in a bedroom. § 87(2)(b) said he had to step between them. The unidentified tall officer (PO OHare) grabbed § 87(2)(b) and pushed him against the wall, outside the bedroom. The officer threw § 87(2)(b) on a bed and kned him in the groin § 87(2)(b) did not see the officer that kned § 87(2)(b). § 87(2)(b) struggled and argued with both officers. The same tall officer then maced him. § 87(2)(b) saw his girlfriend § 87(2)(b) leave the apartment and follow the officers outside, after they had placed her brother under arrest. § 87(2)(b) also saw when § 87(2)(b) was placed in a patrol car. (See enclosures #3B-C). A hand written letter by § 87(2)(b) discloses that when § 87(2)(b) was asked by the officer to leave the room and sit down and he refused. (See enclosure #3E).

The subject Officer Robert OHare admitted that he and his partner responded twice to § 87(2)(b) residence regarding a family dispute. He saw about six family members inside this very small apartment. He attempted to interview § 87(2)(b) after the sister complained that she wanted him to leave the apartment. § 87(2)(b) began flaring his arms and arguing with another male inside this apartment. Officer OHare said he stepped between them, to separate them. § 87(2)(b) continued yelling. He then told him that he was under arrest. He tried handcuffing § 87(2)(b) by touching his upper body or hands, but he resisted. Other family members stood behind him, also yelling. He feared that one of them would grab his gun, so to immediately terminate this physical altercation he maced § 87(2)(b). § 87(2)(b) then complied. Upon escorting § 87(2)(b) out the apartment § 87(2)(b) jumped in front of them, trying to prevent him and his partner from taking § 87(2)(b) from out the apartment. However, Officer OHare denied grabbing § 87(2)(b) by the neck and pushing him against a wall. He also denied kicking him the genitals. Officer OHare also denied using any profanity or making any discourteous statements to anyone. (See enclosures #4F-G).

The witness, Officer Peter Bagnasco, also corroborated his partner's statements. He said that § 87(2)(b) was placed under arrest after he threatened and cursed at them. § 87(2)(b) became irate and resisted being handcuffed. Officer OHare then maced § 87(2)(b). As they tried to restrain § 87(2)(b), he grabbed one of his arm and they all fell on a mattress.

§ 87(2)(b) was then handcuffed. Also, the sisters and other family members were standing behind them during this struggle. He also denied seeing his partner push, kick, or grab anyone by the neck, or use any profanity or make any discourteous remarks to anyone. (See enclosures #5D).

Analysis

Investigator Cherry interviewed § 87(2)(b) and took three Polaroid photos. These photos showed an old raised black visible bruise, (see enclosure #2C). § 87(2)(g)

§ 87(2)(b) did not go to the hospital. She also used alcohol on this wound causing this bruise and recently had a baby.

Enclosed in this case are three separate radio runs, (see enclosures #14A-C), that discloses that Officer Robert OHare and Officer Peter Bagnasco had responded to a family dispute at § 87(2)(b) residence.

§ 87(2)(g)

Officer Robert OHare maced § 87(2)(b). Officer OHare admitted he did this. The witness § 87(2)(b) and complainant/victim support seeing this, and both admitted that § 87(2)(b) had physically resisted being handcuffed and behaved erratically and would not obey the officer's verbal lawful commands.

According to the Patrol Guide Procedure #116-48, page1 lines #2 & 3, pepper spray should be used in situations that require the use of physical force. O.C. pepper spray can be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been effective in overcoming physical resistance. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator: Simone Cherry

Supervisor: Mildred Varela

Reviewed by: _____

Reviewed by: _____

Date: February 19, 1998

Date: _____

Date: _____

Date: _____